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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER, JUDGE

UNITED STATES OF AMERICA,)

Plaintiff,)

VS.)

No. 21-cr-0109-CRB

EMILIO JOSE HEREDIA COLLADO)

a/k/a EMILIO HEREDIA,)

Defendant.)

San Francisco, California
Wednesday, March 24, 2021

TRANSCRIPT OF PROCEEDINGS VIA ZOOM WEBINAR

APPEARANCES: (via Zoom Webinar)

For Plaintiff:

U.S. DEPARTMENT OF JUSTICE
Fraud Section, Criminal Division
U.S. Department of Justice
1400 New York Avenue NW
Washington, District of Columbia 20005

BY: AVI PERRY

**ACTING PRINCIPAL ASSISTANT CHIEF
MATTHEW F. SULLIVAN
TRIAL ATTORNEY**

For Defendant:

ARGUEDAS, CASSMAN, HEADLEY &
GOLDMAN LLP
803 Hearst Avenue
Berkeley, California 94710

BY: TED W. CASSMAN, ESQUIRE

RAPHAEL M. GOLDMAN, ESQUIRE

Reported by:

Katherine Powell Sullivan, CSR #5812, CRR, RMR
Official Reporter - U.S. District Court

Wednesday - March 24, 2021

3:14 p.m.

P R O C E E D I N G S

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THE CLERK: Calling Criminal action 21-0109, USA
versus Emilio Jose Heredia Collado.

Counsel, please state your appearances.

MR. SULLIVAN: Good afternoon, Your Honor. Matthew
Sullivan on behalf of the United States. And with me is my
colleague Avi Perry.

MR. PERRY: Good afternoon, Your Honor.

MR. GOLDMAN: And Raphael Goldman and Ted Cassman on
behalf of Mr. Heredia, who's present with us in our office and
consents to proceeding by video in light of the pandemic, Your
Honor.

THE COURT: Mr. Heredia, you understand that you
are -- you have a right to be personally present in front of
the Court in this change of plea proceeding, but your attorneys
have indicated that you are willing to forego that right and
appear by way of Zoom; is that correct?

THE DEFENDANT: It is, Your Honor.

THE COURT: And where are you located now?

THE DEFENDANT: In Berkeley, California.

THE COURT: Okay. All right. And you have been in
contact with your lawyer, Mr. Cassman; is that correct?

THE DEFENDANT: Yes, sir.

03:15:29

THE COURT: Okay.

2 **MR. CASSMAN:** Your Honor, for the record, Mr. Goldman
3 and Mr. Heredia and I are in the same building. We're here
4 together.

5 **THE COURT:** Okay. Thank you. Would you administer
6 the oath to Mr. Heredia.

7 **THE CLERK:** Please raise your right hand.
8 (Oath administered to the defendant.)

9 **THE COURT:** May I have your full name?

10 **THE DEFENDANT:** Emilio Jose Heredia Collado.

11 **THE COURT:** When were you born?

12 **THE DEFENDANT:** September 21st, 1971.

13 **THE COURT:** How old are you?

14 **THE DEFENDANT:** Forty-nine years old.

15 **THE COURT:** And how far did you go in school?

16 **THE DEFENDANT:** Bachelor's degree.

17 **THE COURT:** Have you been treated recently for any
18 mental illness or addiction to narcotic drugs of any kind?

19 **THE DEFENDANT:** I have not.

20 **THE COURT:** Are you currently under the influence of
21 any drug, medication, or alcoholic beverage of any kind?

22 **THE DEFENDANT:** No, Your Honor.

23 **THE COURT:** Have you received a copy of the charges
24 pending against you?

25 **THE DEFENDANT:** Yes, I have.

03:16:34 **THE COURT:** Have you had an opportunity to discuss
2 those charges and your case with your attorney?

3 **THE DEFENDANT:** Yes, I have.

4 **THE COURT:** Are you fully satisfied with the
5 representation given to you in this case by your attorneys?

6 **THE DEFENDANT:** Yes, I am.

7 **THE COURT:** There is a Plea Agreement in this case.
8 Did you have an opportunity to read and discuss the Plea
9 Agreement with your lawyers before you signed it?

10 **THE DEFENDANT:** Yes, Your Honor.

11 **THE COURT:** Do you understand all the terms of the
12 Plea Agreement?

13 **THE DEFENDANT:** I do.

14 **THE COURT:** Has anyone made any promise or assurance
15 that is not in this agreement?

16 **THE DEFENDANT:** No, Your Honor.

17 **THE COURT:** Has anyone threatened you in any way to
18 persuade you to accept this agreement?

19 **THE DEFENDANT:** No.

20 **THE COURT:** Do you understand the Court is not
21 required to follow any recommendation by the Government or your
22 attorney, and the Court is not required to permit you to
23 withdraw your guilty plea, and may impose a sentence more
24 severe than you anticipate?

25 **THE DEFENDANT:** I do.

03:17:30 **THE COURT:** Has anyone attempted in any way to force
2 you to plead guilty or otherwise threatened you?

3 **THE DEFENDANT:** No, Your Honor.

4 **THE COURT:** Has anyone made any promises or assurances
5 of any kind to get you to plead guilty other than those that
6 are contained in the Plea Agreement?

7 **THE DEFENDANT:** No, Your Honor.

8 **THE COURT:** Are you pleading guilty of your own free
9 will because you are guilty?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** Are you a citizen of the United States?

12 **THE DEFENDANT:** Yes, I am.

13 **THE COURT:** What are the possible consequences of the
14 plea?

15 **MR. SULLIVAN:** Your Honor, pardon the interruption.
16 Apologies. Just on the immigration question, the potential
17 collateral consequences, Mr. Heredia is not a natural born U.S.
18 citizen and actually naturalized in 2016. And, just as set
19 forth in paragraph 1 of the Plea Agreement, his guilty plea may
20 have consequences with respect to his immigration status,
21 including denaturalization and removal.

22 However, Mr. Heredia, as we understand it, still affirms
23 that he wants to plead guilty, regardless of the immigration
24 consequences that may result, even if it results in
25 denaturalization and removal.

03:18:41 **THE COURT:** So, Mr. Heredia, do you understand that
2 your guilty plea -- do you understand that your guilty plea may
3 affect your ability to remain in the United States as well as
4 your ability to return to the United States if you are
5 deported?

6 **THE DEFENDANT:** Yes, sir, I understand.

7 **THE COURT:** Okay. Thank you very much.

8 Mr. Sullivan, what are the possible consequences of the
9 plea?

10 **MR. SULLIVAN:** Thank you, Your Honor.

11 Your Honor, Mr. Heredia is charged with one count of
12 violating Title 18 United States Code Section 371, the maximum
13 penalties of which are five years imprisonment, a fine of
14 \$250,000, or the greater of twice the gross gain or loss
15 resulting from the offense, a term of supervised release of not
16 more than three years, restitution to any victims as ordered by
17 the Court, and a \$100 mandatory special assessment.

18 **THE COURT:** Okay. Do you understand those are the
19 possible consequences of your plea?

20 **THE DEFENDANT:** Yes, I do, sir.

21 **THE COURT:** Do you understand you have the right to
22 plead not guilty to any offense charged against you; to persist
23 in that plea, you would then have the right to a trial by jury;
24 at trial you would be presumed to be innocent, and the
25 Government would have to prove your guilt beyond a reasonable

03:19:51 doubt; you would have the right to assistance of counsel for
2 your defense, appointed by the Court if necessary, at trial and
3 every other stage of the proceeding; the right to see and hear
4 all the witnesses and have them cross-examined in your defense;
5 the right on your own part to decline to testify unless you
6 voluntarily elected to do so in your own defense; and the right
7 to compel the attendance of witnesses in your defense?

8 **THE DEFENDANT:** Yes, Your Honor.

9 **THE COURT:** Do you understand that should you decide
10 not to testify or put on any evidence, these facts cannot be
11 used against you?

12 **THE DEFENDANT:** I do.

13 **THE COURT:** Do you further understand that by entering
14 a plea of guilty, if the plea is accepted by the Court, there
15 will be no trial and you will have given up your right to a
16 trial as well as the other rights associated with the trial as
17 I've just described them?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** What are the essential elements of the
20 offense to which the defendant is pleading guilty?

21 **MR. SULLIVAN:** The essential elements are that, one,
22 the defendant knowingly and willfully agreed with one or more
23 persons to manipulate the price of a commodity in interstate
24 commerce, which in this case is fuel oil; two, the defendant
25 joined in that agreement knowing its object and intending to

03:21:11 help achieve it; and, three, that at least one person who was
2 part of the agreement performed at least one overt act for the
3 purpose of carrying out that agreement.

4 **THE COURT:** So, Mr. Heredia, do you believe if the
5 case went to trial the Government would be able to prove each
6 element of the offense beyond a reasonable doubt?

7 **THE DEFENDANT:** Yes, Your Honor.

8 **THE COURT:** And looking at your Plea Agreement on page
9 2, commencing with paragraph 2 on line 17, and going through
10 page 3, line 11, in that paragraph there are a number of facts
11 that are set forth. Did you read that paragraph carefully
12 before you signed the agreement?

13 **THE DEFENDANT:** Yes, I did.

14 **THE COURT:** And is everything stated in that paragraph
15 true and correct?

16 **THE DEFENDANT:** Yes, Your Honor.

17 **THE COURT:** You may take the plea.

18 **THE CLERK:** Mr. Heredia Collado, the Government has
19 filed an information charging you in Count One with conspiracy
20 to commit price manipulation, in violation of 18 U.S.C. Section
21 371. How do you plead, guilty or not guilty?

22 **THE DEFENDANT:** Guilty.

23 **THE CLERK:** Your Honor, the defendant has entered a
24 guilty plea.

25 **THE COURT:** It is the finding of this Court that the

03:22:31 defendant is fully competent, capable of entering an informed
2 plea; the defendant is aware of the nature of the charges, the
3 consequences of the plea; the plea of guilty is a knowing and
4 voluntary plea supported by an independent basis in fact
5 containing each of the essential elements in the offense. The
6 plea is, therefore, accepted. Defendant is now judged guilty
7 of the offense.

8 **THE CLERK:** Sentencing, we will set for
9 January 14th or the 28th.

10 **MR. SULLIVAN:** Your Honor, if I may just interject for
11 a second.

12 As set forth in the defendant's Plea Agreement, there's a
13 cooperation provision, and he's cooperating with the
14 Government's ongoing investigation. So I'm happy to set down a
15 sentencing date now. I expect, although I can't guarantee,
16 that we likely continue that date. So we can set a sentencing
17 date now or perhaps set a status hearing for --

18 **THE COURT:** Okay. So let us set a --

19 **THE CLERK:** Status date.

20 **THE COURT:** Yeah.

21 **THE CLERK:** What about August 18th, at 1:30?

22 **MR. SULLIVAN:** That works for the Government.

23 **THE COURT:** So, Mr. Heredia, Government counsel
24 reminds me that this agreement has a provision which provides
25 that the Sentencing Guidelines can be affected by the fact, if

03:24:05 it becomes a fact, that you have rendered substantial
2 assistance to the Government. Do you understand that?

3 **THE DEFENDANT:** I do, Your Honor.

4 **THE COURT:** And do you further understand that the
5 decision as to whether or not you have rendered substantial
6 assistance lies with the Government, not with the Court, not
7 with your counsel? Do you understand that?

8 **THE DEFENDANT:** I understand, Your Honor.

9 **THE COURT:** Okay.

10 **MR. GOLDMAN:** August 18th works for the defense, too,
11 so that --

12 **THE COURT:** Sorry?

13 **MR. GOLDMAN:** -- sounds good. I just said August 18th
14 works for the defense too.

15 **THE COURT:** Oh, good. Okay.

16 **MR. GOLDMAN:** I hadn't responded to that yet.

17 **THE COURT:** Thank you very much.

18 **THE CLERK:** That concludes this matter. Thank you.

19 (At 3:24 p.m. the proceedings were adjourned.)

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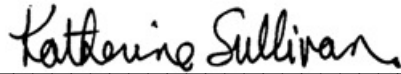
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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Friday, March 26, 2021



Katherine Powell Sullivan, CSR #5812, RMR, CRR
U.S. Court Reporter